IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NO :23610 of 2006

Dated: 20th November 2006.

Between:
M/s.Komal Industries, D-10, Novbad Industrial Area, Bidar, State of Karnataka

..... PETITIONER

AND

The Commissioner of Commercial Taxes (CCT), Andhra Pradesh, Nampally Station Road, Hyderabad and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

W.P.NO.23610 OF 2006

ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is filed with the prayer as follows:

> " For the reasons stated in the accompanying affidavit, it is prayed that the Hon'ble High Court be pleased to callfor the records and issue Writ of Mandamus or any other appropriate writ or direction declaring the action of the 2nd Respondent, that is unloading and detaining the goods by receipt dt. 10/11/2006 as illegal, arbitrary and inoperative and accordingly set-a-side the order of the detention and seizure of goods and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case."

The petitioner is a partnership firm and a registered dealer under the relevant laws of the State of Karnataka, having a small-scale industry engaged in the business of manufacturing iron and steel pipes (M.S.Wire) etcetera. The petitioner claims that for the purpose of its industry, it purchased certain raw material weighing about

15.250 MTs., from one M/s. Somya Trading Company, Bhilai, State of Chattisgadh. It is further asserted in the

affidavit filed in support of the petition that the said raw material was dispatched by the abovementioned vendor through a truck bearing number CGO 4J 4940. While the said vehicle was passing through the territory of Andhra Pradesh, the 2nd respondent stopped the vehicle at Medchal and detained the goods on the ground that the driver of the vehicle could not produce the necessary documents (Transit Pass) contemplated under Section 47 of the A.P.V.A.T Act, 2005.

The case of the petitioner is that the goods are destined to the petitioner's factory located at Bidar, which is in the State of Karnataka. The transshipment of the goods is originated from the State of Chattisgadh. The transaction is an interstate sale transaction and is not amenable to any tax in the State of Andhra Pradesh. Therefore, detention of the goods is illegal.

Heard the learned Government Pleader for Commercial Tax.

Section 47 of the Act, contemplates that any vehicle carrying goods through the State of Andhra Pradesh is required to obtain a transit pass from the officer incharge of the first check post encountered by the vehicle after the vehicle enters the territory of the State of Andhra Pradesh and surrender the said transit pass at the last check post, on the route of the vehicle located in the territory of the Andhra Pradesh. The provision, obviously, made with a view to ensure that goods are not illegally imported into the State without payment of the

tax under the Act, under the guise of an interstate sale transaction.

The learned Government Pleader for Commercial Tax submits that the State has come across a number of cases, where goods are brought into Andhra Pradesh accompanied by documents evidencing the fact that the goods are transshipped from a place outside the Andhra Pradesh and destined to reach another place outside the State of Andhra Pradesh and in order to reach the destination the goods are required to pass through the State of Andhra Pradesh, but as a matter of fact, the goods are eventually, unloaded and sold in the State of Andhra Pradesh avoiding the payment of tax under the A.P.V.A.T. Act or its predecessor enactments.

The provision under Section 47of the Act, is made not for the purpose of levying any tax on the interstate sale transactions, but to curb the abuse of documents issued under the C.S.T. Act.

Section 47, in our view, prescribes only a mode of proof of a fact that the goods are, in fact, not sold in the State of Andhra Pradesh. Whether that is the only mode of proving the said fact or not is a different matter and we do not propose to deal with that question in the present writ petition. Failure to produce the transit pass, contemplated under Section 47 of the Act, leads to a presumption created under Section 47 " **that the goods carried thereby from the State have been sold within**

the State by the owner or person-in-charge of the vehicle …", and on such a presumption, an assessment is required to be made for the tax payable on such goods under the Act.

Eventually, for the assessment, the fact that the goods have been sold in the State of Andhra Pradesh, is to be established. The presumption created under Section 47 of the Act, in our view, can only be a rebuttable presumption.

In the circumstances, we deem it appropriate to dispose of the writ petition at this stage directing the respondents to release the goods of the petitioner, detained by them, on condition of the petitioner depositing the amount of tax payable by the petitioner, if the petitioner were to be liable to assessment under the Act. The respondents shall pass an order of assessment after an appropriate enquiry into the matter and giving a reasonable opportunity to the petitioner to establish that the goods are, in fact, not sold in the State of Andhra Pradesh. Depending on the outcome of the said proceedings, the amount so deposited pursuant to this order, shall either be appropriated by the State or returned to the petitioner. In the event of the respondents coming to the conclusion that the petitioner's goods are liable to tax in the State of Andhra Pradesh, it is open to the respondents to take all other steps warranted under law.

Accordingly, with the above directions, the writ

petition is disposed of at the stage of admission.

J.Chelameswar, J

D.Appa Rao, J

Note:
Issue copy by tomorrow.
(bo)
mrk
20th November 2006